

1986 December 19

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

IOANNIS PREZAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 231/84).

Educational Officers—Promotions—Qualifications—Scheme of service—Intepretation and application of—The province, but, also, a duty cast upon the Commission—Fact that on previous occasion same candidate was treated as possessing a particular qualification does not absolve Commission from its said duty on the specific occasion—Failure to inquire into qualifications of candidates, though Commission expressed doubts as to the qualifications of some of them—No indication whether interested party was among such candidates—But as his qualifications were not such as not to raise a question or doubt, his promotion has to be annulled for failure to carry out a due inquiry.

By means of this recourse the applicant challenges the promotion of the interested party to the post of Inspector A in the Secondary Education for the subject of Mechanical Engineering instead of and in preference to him on the ground, inter alia, that there was no due inquiry into the possession by the interested party of the required qualifications under the scheme of service for the post in question.

At its meeting of 1.2.84 the Commission expressed cer-

tain reservations with regard to the qualifications of certain of the candidates, but decided to call all the candidates for an interview "so that they may give explanations also orally". There was no indication whether the interested party was one of such candidates.

There is nothing in the minutes of the further meetings held by the Commission to show that any further inquiries were carried out into the matter. What is in dispute is whether the interested party possesses a university degree or title or equivalent qualification in a subject of his specialisation.

Held, annulling the sub judice decision: (1) The interpretation and application of a scheme of service is a task of the respondent and it is in fact a duty cast upon it. The fact that on previous occasions the same person was treated as possessing a particular qualification does not exonerate the respondent of its duty to examine whether the candidate, on the specific occasion under consideration, possesses the qualifications required under the scheme of service for the post in question.

(2) From perusal of its minutes the conclusion is that in this case the respondent never resolved the doubts expressed in its meeting of 1.2.84. There is no indication whether the interested party was among the candidates, whose qualifications were doubted, but as his qualifications are not such as not to raise any question or doubt that has to be resolved by the respondent, this Court has to annul the sub judice decision for failure to carry out a due inquiry as to the matter of the qualifications of the interested party.

Sub judice decision annulled.

No order as to costs.

Cases referred to:

Michael and Another v. Public Service Commission (1982)
3 C.L.R. 726;

Ktorides v. The Republic (1973) 3 C.L.R. 171;

Sofocleous (No. 2) v. The Republic (1972) 3 C.L.R. 537.

Recourse.

Recourse against the decision of the respondent to promote the interested party to the post of Inspector A in the Secondary Education in preference and instead of the applicant. 5

A. S. Angelides, for the applicant.

R. Vrahimi (Mrs.), for the respondent.

G. Triantafyllides, for the interested party.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant in this recourse challenges the decision of the respondent dated 6.4.1984, which was published in the official Gazette of the Republic dated 4.5.1984, whereby the interested party, namely, Antonis Michaelides, was promoted to the post of Inspector A in the Secondary Education for the subject of Mechanical Engineering instead of and in preference to the applicant. 10
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The applicant was appointed as a teacher in the Elementary Education in 1962 and as a Technologist (Secondary Education) in 1966, a post which he was still holding at the material time. The interested party was holding, at the material time, the post of Assistant Headmaster, to which he was promoted in 1973. 20

A number of vacancies in the post of Inspector in the Secondary Education concerning several subjects was advertised on the 29th October, 1983 and both the applicant and the interested party were amongst those who submitted applications for the subject of Mechanical Engineering. 25

The respondent, at its meeting of 1.2.1984, after listing the names of those who submitted applications stated the following: 30

"The Commission has certain reservations with regard to the qualifications of certain of the candidates for the post of Inspector of Electrical and Me- 35

chanical Engineering but decides to call all the candidates for a personal interview so that they may give explanations also orally.”

5 In fact a perusal of the scheme of service and in particular the requirement of University degree or title, casts a doubt as to whether the interested party possessed such qualifications.

10 The interviews were held on 9.3.1984. At its meeting of 15.3.1984, the respondent evaluated the candidates on the basis of the personal notes kept by its members during the interviews and proceeded, at its final meeting of 6.4.84, after hearing the recommendations of the Department concerned, to select the interested party for promotion to the post in question.

15 The applicant filed the present recourse challenging the above decision.

20 Counsel for applicant based his case on the grounds that no due inquiry was carried out into the possession by the interested party of the qualifications required under the scheme of service and that the recommendations made by the Head of the Department were improperly made.

25 Counsel for the applicant argued that the interested party does not possess the first and basic qualification in Mechanical Engineering which is required by the scheme of service, although he satisfies the requirements as to the post-graduate qualifications. Further, that the respondent, although it expressed certain doubts as to whether certain candidates possessed the required qualifications, it did not carry any inquiry into the matter in order to resolve
30 those doubts.

The interested party possesses the following qualifications, as those are stated in the comparative table produced for the purposes of the recourse:

35 “Shoreditch College (workshop engineering and education).

72/73 (Oregon Univ.) Administration and Supervision.

Diploma in Education (London) (Correspondence).

M. A. in education (Sussex)."

The requirements of the scheme of service are, in this respect, the following:

1. A University degree or title or an equivalent qualification in the subject of his specialisation, giving him the right of emplacement to the post of teacher/instructor in scales A8 - A10. 5
2. Post-graduate training in paedagogics in a subject relevant to the duties of the post of at least one academic year's duration." 10

The latter requirement is, however, waived (by note 2) for technical education, provided that it is acquired by the appointees within five years from the approval of the scheme of service (which was approved on 16.12.1982). 15

It is not disputed that the interested party possesses the qualifications under paragraph 2. What is disputed is that he possesses a university degree or title or equivalent qualification in a subject of his specialisation. From what appears to me, this is not something that can be obviously deduced from a mere perusal of his qualifications. The interpretation and application of the schemes of service is the task of the respondent and it is in fact a duty cast upon it. And the fact that on a previous occasion the same person was treated as possessing the same qualifications (i.e. by being emplaced on the scales A8 - A10) does not exonerate the respondent of its duty to examine whether the candidates possessed, on the specific occasion under consideration, the qualifications required under the scheme of service for the post in question (see *Michael and Another v. The Public Service Commission* (1982) 3 C.L.R. 726, at p. 742, where reference is also made to *Ktorides v. The Republic* (1973) 3 C.L.R. 171, at p. 174, and *Sofocleous (No. 2) v. The Republic* (1972) 3 C.L.R. 537). 20
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In the present case the respondent itself expressed certain doubts as to the possession by certain candidates for this particular post of the qualifications required and de- 35

cided to resolve the matter during the personal interviews (See minutes of the meeting of the respondent dated 1.2.84, cited earlier).

5 The minutes of the meeting of the respondent dated 9.3.1984, during which the interviews took place, read as follows:

“1. *Interviews with candidates for the post of Inspector A' in Technical Education (for Mechanical Engineering and Electrical Engineering).*”

10 The Director of Technical Education Mr. N. Hji Nicolas is present.

In accordance with its decision dated 1.2.84 the Educational Service Commission interviews the following applicants, for the post of Inspector A' in Technical Education for Mechanical Engineering.”

15 And the names of five candidates follow. There is also a note that a 6th candidate was interviewed on another date. There is nothing to show that any inquiries were made or any decision was taken regarding the qualifications of any candidate.

20 In the minutes of the respondent dated 15.3.84, it is stated that:

“During the interview which lasted about 30 minutes for each candidate, questions were put to the candidates which concerned educational matters, the administration of schools and other relevant matters. In assessing their performance, the Commission took into consideration”

25 The Commission then proceeded, at its subsequent meetings, after hearing the recommendations of the Head of the Department, who recommended the interested party and another candidate (not the applicant) to select the interested party for promotion to the post in question.

35 Having perused the minutes of the various meetings of the respondent, I have come to the conclusion that the

respondent never resolved the doubts expressed by it as to the possession by certain candidates of the qualifications required under the relevant scheme of service. There is no indication as to whether the interested party was amongst those candidates whose qualifications were doubted by the Commission. Since, however, his qualifications, as I said earlier, are not such as not to raise any question or doubt which has to be resolved by the respondent, I feel that I would annul the sub judice decision on the ground of failure by the respondent to conduct a due inquiry into the possession by the interested party of the qualifications required under the scheme of service for the particular post in question.

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In the result this recourse succeeds and the sub judice decision is annulled with no order for costs.

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*Sub judice decision annulled.
No order as to costs.*